

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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FELIX MARTINEZ,

Petitioner,

-v-

UNITED STATES OF AMERICA,

Respondent.

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JED S. RAKOFF, U.S.D.J.

On July 14, 2005, the Honorable James C. Francis, IV, United States Magistrate Judge, issued a Report and Recommendation in the above-captioned matter recommending that Martinez's petition for a writ of habeas corpus under 28 U.S.C. § 2255 be denied because he cannot show that ineffective assistance of counsel led him to waive involuntarily his right to appeal any sentence between 87 and 108 months. Thereafter, petitioner timely filed objections to the Report and Recommendation, but the civil action was inadvertently (and erroneously) terminated by the Southern District's docket clerk.

The Court therefore hereby re-opens the matter, and, having reviewed the record and the issues de novo, and having considered the objections, adopts the Report and Recommendation and, for the reasons stated therein, dismisses the petition. Additionally, because the petitioner has not made a substantial showing of the denial of a constitutional right, the Court declines to issue a Certificate of Appealability under 28 U.S.C. § 2253. Further,

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the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from the Court's order would not be taken in good faith. Clerk to enter judgment.

SO ORDERED.



JED S. RAKOFF, U.S.D.J.

Dated: New York, New York
April 18, 2006